

SENATE BILL REPORT

SHB 1643

As Reported By Senate Committee On:
Judiciary, March 29, 2001

Title: An act relating to liability of volunteers.

Brief Description: Limiting liability of volunteers.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Skinner, Fromhold, Ogden, Esser, Jarrett, McIntire, Rockefeller, Doumit, Keiser and Dunn).

Brief History:

Committee Activity: Judiciary: 3/22/01, 3/29/01 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Constantine, Vice Chair; Costa, Johnson, Kastama, Long, McCaslin, Roach, Thibaudeau and Zarelli.

Staff: Dick Armstrong (786-7460)

Background: A volunteer working on behalf of a nonprofit organization or government entity may be held personally liable to a person who is harmed by the volunteer's actions or omissions committed in the course of his or her volunteer duties.

In 1997 Congress passed the Volunteer Protection Act (VPA). The VPA limits the liability of nonprofit or government volunteers. Under the VPA a volunteer may only be held liable for harm resulting from acts or omissions that constitute gross negligence, willful misconduct, or reckless misconduct. A volunteer is exempt from liability for simple negligence.

The VPA preempts any inconsistent state law except where state law provides additional protections for the volunteer. A state may choose to opt out of the VPA by enacting a statute declaring that the VPA does not apply. Washington has not opted out of the VPA.

Summary of Bill: A volunteer of a nonprofit organization or governmental entity is not personally liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:

- The volunteer was acting within the scope of his or her responsibilities at the time;
- The volunteer was properly licensed, certified, or authorized to engage in the activity;
- The harm was not caused by willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to the rights or safety of others;
- The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires an operator's license or insurance; and

- The nonprofit organization carries public liability insurance in specified amounts.

This limitation on the personal liability of volunteers does not affect the nonprofit organization's or governmental entity's direct or vicarious liability for the harm caused by the volunteer, nor does it affect the ability of the organization or entity to bring a cause of action against the volunteer.

"Volunteer" is defined as an individual performing services for a nonprofit organization or governmental entity who does not receive compensation, other than reasonable reimbursement for expenses actually incurred, or any other thing of value, over \$500 per year. "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

"Nonprofit organization" is defined as any 501(c)(3) or 501(c)(14)(A) organization under the Internal Revenue Code, as well as any not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

Definitions of "harm," "economic loss," and "non-economic loss," are also included in the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill parallels the federal statute which purports to preempt state law. We need this law because it is likely the federal law will not be upheld since this subject is a matter for state regulation. Most public benefit activities are conducted by volunteers. This bill would help protect volunteers from suits or threats of suits. There is a substantial cost of defending against even a frivolous suit. It is becoming more difficult to find volunteers because of their fear of lawsuits. The bill does not affect the liability of the organization, nor does it affect the volunteer's liability to the organization. There is similar legislation in 15 other states. This bill is important because it protects credit union volunteers, and the federal law does not. Volunteers are the backbone of credit unions.

Testimony Against: None.

Testified: Representative Lantz, prime sponsor; Mark Minickiello, WA Credit Union League; Kris Tucker, Art's Commission; Robert Gruhn, WA Museum Assn.; Sharon Foster, YMCA.